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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 MARC and ROBERTA GALLIANI,

11 Plaintiffs,

No. 2:12-cv-00411 KJM KJN PS

12 v.

13 CITIMORTGAGE, INC.,

14 Defendant.

ORDER

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16 On March 20, 2012, defendant filed a motion to dismiss plaintiffs' complaint, or
17 transfer the matter to the Middle District of North Carolina in the alternative, pursuant to Federal
18 Rules of Civil Procedure 12(b)(6) and 12(b)(3), respectively (Dkt. No. 8).¹ Defendant noticed its
19 motion for a hearing to take place before the undersigned on May 3, 2012. Pursuant to this
20 court's Local Rules, plaintiffs were obligated to file and serve a written opposition or statement
21 of non-opposition to the pending motion at least fourteen days prior to the noticed hearing date,
22 or April 19, 2012. See E. Dist. Local Rule 230(c).² The court's docket reveals that plaintiffs,
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24 ¹ This action proceeds before the undersigned pursuant to Eastern District of California
25 Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

26 ² Eastern District Local Rule 230(c) provides:

1 who are proceeding without counsel, failed to file a written opposition or statement of non-
2 opposition with respect to defendant's motion.

3 Eastern District Local Rule 110 provides that "[f]ailure of counsel or of a party to
4 comply with these Rules or with any order of the Court may be grounds for imposition by the
5 Court of any and all sanctions authorized by statute or Rule or within the inherent power of the
6 Court." Moreover, Eastern District Local Rule 183(a) provides, in part:

7 Any individual representing himself or herself without an attorney is
8 bound by the Federal Rules of Civil or Criminal Procedure, these Rules,
9 and all other applicable law. All obligations placed on "counsel" by these
10 Rules apply to individuals appearing in propria persona. Failure to comply
11 therewith may be ground for dismissal . . . or any other sanction
12 appropriate under these Rules.

13 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the
14 same rules of procedure that govern other litigants."). Case law is in accord that a district court
15 may impose sanctions, *including involuntary dismissal of a plaintiff's case* pursuant to Federal
16 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to
17 comply with the court's orders, the Federal Rules of Civil Procedure, or the court's local rules.³
18 See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court "may act *sua*
19 *sponte* to dismiss a suit for failure to prosecute"); Hells Canyon Preservation Council v. U.S.
20 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action

21 **(c) Opposition and Non-Opposition.** Opposition, if any, to the granting of
22 the motion shall be in writing and shall be filed and served not less than
23 fourteen (14) days preceding the noticed (or continued) hearing date. A
24 responding party who has no opposition to the granting of the motion shall
25 serve and file a statement to that effect, specifically designating the motion
26 in question. No party will be entitled to be heard in opposition to a motion
at oral arguments if opposition to the motion has not been timely filed by that
party. . . .

³ The Ninth Circuit Court of Appeals had held that under certain circumstances a district court does not abuse its discretion by dismissing a plaintiff's case pursuant to Federal Rule of Civil Procedure 41(b) for failing to file an opposition to a motion to dismiss. See, e.g., Trice v. Clark County Sch. Dist., 376 Fed. Appx. 789, 790 (9th Cir. 2010), cert. denied, 131 S. Ct. 422 (2010).

1 pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff's failure to prosecute
2 or comply with the rules of civil procedure or the court's orders); Ghazali v. Moran, 46 F.3d 52,
3 53 (9th Cir. 1995) (per curiam) ("Failure to follow a district court's local rules is a proper ground
4 for dismissal."), cert. denied, 516 U.S. 838 (1995); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th
5 Cir. 1992) ("Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
6 action for failure to comply with any order of the court."), cert. denied, 506 U.S. 915 (1992);
7 Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam)
8 (stating that district courts have inherent power to control their dockets and may impose
9 sanctions including dismissal), cert. denied, 479 U.S. 829 (1986).

10 In light of the foregoing, IT IS HEREBY ORDERED that:

11 1. The hearing on defendant's motion to dismiss plaintiffs' complaint or to
12 transfer the action in the alternative (Dkt. No. 8), which is presently set for May 3, 2012, is
13 continued until June 7, 2012.

14 2. Plaintiffs shall file a written opposition to the motion to dismiss, or a
15 statement of non-opposition thereto, on or before May 17, 2012. *Plaintiffs' failure to file a*
16 *written opposition will be deemed a statement of non-opposition to the pending motion and*
17 *plaintiffs' consent to the granting of the motion to dismiss, and shall constitute an additional*
18 *ground for the imposition of appropriate sanctions, including a recommendation that plaintiffs'*
19 *case be involuntarily dismissed with prejudice pursuant to Federal Rule of Civil*
20 *Procedure 41(b).*

21 3. Defendant may file a written reply to plaintiffs' opposition, if any, on or
22 before May 24, 2012.

23 IT IS SO ORDERED.

24 DATED: April 23, 2012

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26 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE